

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Wendell Raymone Jones,

Defendant.

MEMORANDUM OPINION

AND ORDER

Criminal No. 08-340 ADM/AJB

Andrew Dunne, Esq., United States Attorney's Office, Minneapolis, MN, on behalf of Plaintiff.

Wendell Raymone Jones, pro se.

I. INTRODUCTION

This matter is before the undersigned United States District Judge for a ruling on Wendell Raymone Jones' ("Jones") motion to reopen his case pursuant to Fed. R. App. P. 4(a)(6)(B) and Fed. R. Civ. P. 60(b)(1). Pro Se Motion [Docket No. 49]. For the reasons below, Jones' Motion is denied.

II. BACKGROUND

On November 13, 2008, Jones was indicted on one count of Possession with Intent to Distribute Cocaine Base in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A). See Indictment [Docket No. 1]. Jones' offense was subject to a mandatory minimum sentence of 10 years (120 months) under 21 U.S.C. § 841(b)(1)(A). See Order Mot. Reduce Sentence [Docket No. 48]. Jones pleaded guilty on January 29, 2009. See Change of Plea Hr'g [Docket No. 9]. On July 9, 2009, Jones was sentenced to 11 years (132 months) of imprisonment. See Judgment [Docket No. 17].

On December 16, 2011, Jones filed his Motion under 18 U.S.C. § 3582, arguing that the

retroactivity of a 2010 amendment to the Sentencing Guidelines entitled him to a reduction of his sentence. Mot. Mod. of Sentence [Docket No. 44]. Due to the circumstances surrounding Jones' arrest—particularly the high-speed chase, the endangerment of police officers, and the severe injuries to bystanders—this Court issued its Order denying Jones' motion on January 5, 2012. Order Mot. Reduce Sentence. No direct appeal of this order was taken. On July 17, 2012, Jones filed the current motion to reopen the issue and allow him to appeal. Pro Se Motion.

III. DISCUSSION

Jones moves the Court to reopen his case pursuant to Rule 4 of the Federal Rules of Appellate Procedure. However, the rule to which Jones cites, Rule 4(a)(6)(B), applies only to appeals in civil cases. See Fed. R. App. P. 4(a) (“Appeal in a Civil Case”). Jones also argues that the Court should grant him relief pursuant to Rule 60 of the Federal Rules of Civil Procedure. However, the Federal Rules of Civil Procedure govern civil actions, not criminal actions. See Fed. R. Civ. P. 1 (“These rules govern the procedure in all civil actions and proceedings in the United States district courts.”). Because Jones seeks relief to appeal a motion related to criminal sentencing, Rule 4(b) governs his case. See Fed. R. App. P. 4(b) (“Appeal in a Criminal Case”); see also United States v. Petty, 82 F.3d 809, 810 (8th Cir. 1996) (concluding that Rule 4(b) applies to an appeal from the denial of a § 3582(c)(2) motion).

Rule 4(b) requires that a defendant's notice of appeal be filed within 14 days of the entry of either the judgment or the order being appealed, whichever is later. Fed. R. App. P. 4(b)(1)(A). Rule 4(b) also allows a court to extend the time to file a notice of appeal in the event of a finding of “excusable neglect or good cause.” Fed. R. App. P. 4(b)(4). However, an extension of time granted under this provision is “not to exceed 30 days from the expiration of

the time otherwise prescribed by this Rule 4(b).” Id.

The Court’s Order on Jones’ Motion to Reduce Sentence was filed January 5, 2012. See Order Mot. Reduce Sentence. Jones’ Motion challenging the Court’s Order was not filed until July 17, 2012, well beyond the 14 day deadline. See Pro Se Motion. The 30-day extension under Rule 4(b)(4) provides no relief in this case, because Jones also failed to act within that time period. Id. In addition, Jones provided no explanation for why he allowed several months to pass before filing the current motion.¹ See Pro Se Motion. Because Jones’ motion is not timely, Jones waived his right of appeal.

IV. CONCLUSION

Based on the foregoing, and all the files, records and proceedings herein, **IT IS
HEREBY ORDERED** that Defendant Wendell Raymone Jones’ Pro Se Motion is **DENIED**.
LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery

ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE

Date: October 30, 2012

¹ Any explanation that Jones’ delay in filing an appeal was based on his attorney’s representation that she would file an appeal is not credible. Menendez Aff. Ex. 1 [Docket No. 54].